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CITATIONS

Cases:

Commissioner v. *Alabama Asphaltic Limestone Co.*, 119 F. (2d) 819, certiorari granted, No. 328, this Term — 4

Commissioner v. *Bondholders Committee, Marlborough Investment Co.*, 118 F. (2d) 511, certiorari granted, Nos. 128, 129, this Term — 4

Commissioner v. *Cement Investors, Inc.*, 122 F. (2d) 380, pending on petition for certiorari, No. 644, this Term — 4

Commissioner v. *James Q. Newton, Jr.*, 122 F. (2d) 416, pending on petition for certiorari, No. 646, this Term — 4

Commissioner v. *James Q. Newton Trust*, 122 F. (2d) 416, pending on petition for certiorari, No. 645, this Term — 4

Commissioner v. *Palm Springs Holding Corp.*, 119 F. (2d) 846, certiorari granted, No. 503, this Term — 4

Commissioner v. *Southwest Consol. Corp.*, 119 F. (2d) 561, certiorari granted, No. 286, this Term — 4

Statute:

Revenue Act of 1934, c. 277, 48 Stat. 680:

Section 112 (U. S. C., Title 26, Sec. 112) — 5

Section 113 (U. S. C., Title 26, Sec. 113) — 5

Section 114 (U. S. C., Title 26, Sec. 114) — 6

429025—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. ——

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

NEW HAVEN AND SHORE LINE RAILWAY COMPANY, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit, entered in the above case September 19, 1941, affirming a decision of the United States Board of Tax Appeals.

OPINIONS BELOW

The memorandum opinion of the United States Board of Tax Appeals (R. 15–16) is unreported. The opinion of the Circuit Court of Appeals (R. 105–109) is reported in 121 F. (2d) 985.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 19, 1941. (R. 108.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Pursuant to plan, corporate assets were bought in at equity foreclosure sale by a bondholders' committee. The property was transferred to the taxpayer, a new corporation, in return for all its capital stock which was distributed to the depositing bondholders. The question is whether the basis of the assets for computing depreciation is the same as it would be in the hands of the old corporation under Section 113 (a) (7) of the Revenue Act of 1934. The answer depends upon whether the transaction constituted a "reorganization" within the definition of Section 112 (g) (1) of the Act.

STATUTE INVOLVED

The statute involved is set forth in the Appendix, *infra*, pp. 5–6.

STATEMENT

The taxpayer's predecessor corporation, the New Haven and Shore Line Railway Company, went into receivership in 1931. Thereafter, a bondholders' committee was formed, representing more than 95 per cent of the outstanding bonds of the Company ($441,500 out of $461,000) (R. 15, 29–30).

Pursuant to plan, the bondholders' committee in 1934 bought in the assets of the debtor at foreclosure sale for $60,000 and the interests of the stockholders were eliminated (R. 16, 30–31). The taxpayer was then formed and the assets transferred to it in exchange for all of its capital stock, which was distributed to depositing bondholders. Non-depositors received their pro rata share of the foreclosure price in cash (R. 16).

The taxpayer, in computing deductions for depreciation in its income and excess-profits tax returns for the period July 27, 1934, to December 31, 1934, and for the calendar year 1935, used as the basis the cost of the depreciable assets to the old company. The Commissioner, in determining deficiencies, used as the basis the cost of these assets to the committee, measured by the portion of the bid price allocable to them. The Board of Tax Appeals rejected the Commissioner's determination (R. 15), and the court below affirmed.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the taxpayer's assets had been acquired in connection with a "reorganization" of the old company and that therefore their basis was the cost to that company.

2. In failing to hold that the basis of the assets was their cost to the bondholders' committee.

3. In sustaining the decision of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT

The basic question in this case is the same as that involved in *Commissioner* v. *Palm Springs Holding Corp.*, 119 F. (2d) 846 (C. C. A. 9th), and *Commissioner* v. *Bondholders Committee, Marlborough Investment Co.*, 118 F. (2d) 511 (C. C. A. 9th), in which the Court has granted certiorari on the taxpayer's petitions (Nos. 503, 128, and 129, respectively), and in *Commissioner* v. *Southwest Consol. Corp.*, 119 F. (2d) 561 (C. C. A. 5th), and *Commissioner* v. *Alabama Asphaltic Limestone Co.*, 119 F. (2d) 819 (C. C. A. 5th), in which the Court has granted certiorari on the Government's petitions (Nos. 286 and 328, respectively). The same primary question is also involved in *Commissioner* v. *Cement Investors, Inc.*, 122 F. (2d) 380 (C. C. A. 10th), *Commissioner* v. *James Q. Newton Trust*, 122 F. (2d) 416 (C. C. A. 10th), and *Commissioner* v. *James Q. Newton, Jr.*, 122 F. (2d) 416 (C. C. A. 10th), now pending on the Government's petitions for certiorari (Nos. 644, 645, and 646, respectively). The considerations for further review in those cases are likewise applicable here.

CONCLUSION

The petition should be granted.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

December, 1941.